

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** October 04, 2019

**CASE NO(S):** PL190202

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Cheesan Chew
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	29 Melbourne Street
Municipality:	City of Hamilton
Municipal File No.:	A-60/19
LPAT Case No.:	PL190202
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LPAT Case Name:	Chew v. Hamilton (City)

**Heard:** August 21, 2019 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Representative**

Cheesan Chew

David Premi

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON AUGUST 21,  
2019 AND ORDER OF THE TRIBUNAL**

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[1] The matter before the Tribunal is the appeal of Cheesan Chew (the “Applicant/Owner”) from the decision of the City of Hamilton (the “City”) Committee of

Adjustment (the “COA”) to refuse a minor variance application for the property located at 29 Melbourne Street (the “subject property”).

[2] The subject property is designated “Neighbourhoods” by the Urban Hamilton Official Plan (the “UHOP”) and is zoned “D” (Urban Protected Residential – One and Two Family Dwellings) District by Zoning By-law No. 6593 (the “ZBL”).

[3] The UHOP supports development and intensification compatible with the character of the neighbourhood: a duplex is a permitted use within the Neighbourhoods designation and is a form of dwelling that is permitted by the ZBL, subject to the provisions of Section 19.

[4] The Applicant proposes to demolish an existing dwelling and to construct a two-and-a-half storey, 'Two Family Dwelling' (duplex) with front to back units on the subject property. Two parking spaces are to be provided at the back of the dwelling and will be accessed from a rear laneway. In order to proceed, authorization of the following variances to the ZBL is required:

1. a front yard depth of 3 metres (“m”), whereas a minimum front yard depth of 6 m is required;
2. an east and west side yard width of 0.9 m, whereas a minimum side yard width of 1.2 m is required;
3. a lot width of 7.4 m, whereas a minimum lot width of 18.0 m is required;
4. a lot area of 326 square metres (“sq m”), whereas a minimum lot area of 540.2 sq m is required;
5. a 0.0 m setback from the nearest street line for an uncovered porch, whereas a minimum setback from the nearest street line of 1.5 m is required.

[5] Mr. Premi, the Applicant's Architect, provided contextual evidence. In that regard, he explained that the existing dwelling was constructed circa the 1930s and is currently vacant. The structure is in a deteriorated state and an inspection by professional engineers determined that it is neither appropriate nor feasible to renovate the existing house. Mr. Premi said that in the course of developing the building design he met several times with City staff, and in fact, the City's Director of Housing expressed excitement about the proposal.

[6] Ms. Chew told the Tribunal that her husband canvassed the local neighbourhood about their plans for the property, and while some neighbours asked questions, there was no opposition to the proposal. Some of their neighbours are very supportive of the proposal.

## **ANALYSIS AND FINDINGS**

[7] The Tribunal is satisfied that the application meets the criteria set out in s. 45(1) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended. In arriving at this disposition, the Tribunal accepts the information as provided by Mr. Premi and Ms. Chew, and further relies on the information contained in the report of the City's Planning and Economic Development Department.

[8] In particular, the report sets out that the UHOP supports development and intensification that is compatible with the character of the neighbourhood and confirms that the proposed single detached dwelling with a secondary dwelling is a permitted use within the Neighbourhoods designation. The proposed two family dwelling structure will be constructed to maintain the existing character and streetscape of the neighbourhood, as the adjacent and surrounding dwellings are located as close as 0.0 m to the property line, and setback as far as 4.0 m from the property line. The stairs of the front porch will be located 0.0 m from the street line which is in keeping with the existing porches with projecting stairs in this neighbourhood and is consistent with the streetscape along Melbourne Street. The related variances (Variance 1 and 5) will have no impact on

landscaping or amenity space in front of the home and will ensure that the front yard functions appropriately to satisfy the amenity needs of the tenants of the two family dwellings.

[9] The side yard setbacks being proposed will allow for adequate access, maintenance and drainage. From a privacy perspective, as the adjacent home at 31 Melbourne Street is built to the separating property line, City staff recommended that the variance for the west side yard setback (Variance 2) be approved, subject to the condition that the Owner install opaque window screening along any window openings within the westerly elevations.

[10] The reduced lot width and lot area (Variances 3 and 4) is an existing condition and is in keeping with the character of the streetscape.

[11] In the final analysis, it was the opinion of City staff that the requested variances meet the general intent and purpose of the UHOP and the ZBL, are minor in nature and will facilitate the development of a residential building that is an appropriate and desirable use of the lands. The staff report recommended that Variances 1, 3, 4 and 5 be approved, and Variance 2 be approved, subject to the stated condition in respect to the westerly side yard setback.

[12] In sum, the Tribunal is satisfied that the general intent and purpose of the OP and the ZBL is being appropriately maintained. The variances will facilitate the development of the subject property in a manner that is both desirable and appropriate, and consistent with the principles of good land use planning. The variances being sought are minor and/or technical in nature and do not result in the creation of unacceptable adverse impacts to adjacent properties or the broader neighbourhood.

**ORDER**

[13] The Tribunal orders that the appeal is allowed and Variances 1, 3, 4 and 5 to Zoning By-law No. 6593 are authorized, and;

[14] Variance 2 to Zoning By-law No. 6593 is authorized subject to the condition that the Owners install opaque window screening along any proposed window openings within the westerly elevations.

*"M.A. Sills"*

M.A. SILLS  
MEMBER

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**Local Planning Appeal Tribunal**

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